

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JIMMY TAYLOR,)	
)	
Petitioner,)	
)	
vs.)	Case No. 4:09CV649 HEA
)	
TROY STEELE,)	
)	
Respondent.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Magistrate Judge Adelman's Report and Recommendation of July 18, 2012. Judge Adelman recommends that Petitioner's Petition for Writ of Habeas Corpus, [Doc. No.1], be dismissed. Petitioner has not filed written objections to the Report and Recommendation.

Judge Adelman's Report and Recommendation contains a thorough analysis of the timing of Petitioner's petition. This Court agrees with Judge Adelman's conclusion that Petitioner has failed to timely file his Petition for Writ of Habeas Corpus. The Court will adopt Judge Adelman's recommendation that this matter be dismissed without further proceedings.

Certificate of Appeal ability

The federal statute governing certificates of appealability provides that "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §

2253(c)(2). A substantial showing of the denial of a constitutional right requires that “issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings.” *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997). Based on the record, a Certificate of Appealability is not warranted in this matter.

Judge Adelman’s Report and Recommendation carefully considers the timeliness of the filing of this Petition. The Court agrees that this matter was not timely filed.

Accordingly,

IT IS HEREBY ORDERED that the Petition of Ronald R. Smith, Jr. for a Writ of Habeas Corpus, [Doc. No.’s 1 and 16], is dismissed without further proceedings.

IT IS FURTHER ORDERED that the Court will not issue a Certificate of Appealability.

Dated this 27th day of August, 2012.

A handwritten signature in cursive script, reading "Henry Edward Autrey", written in black ink.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE